Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1979

No. 79-199

ARTHUR ALAN deJARDIN, Petitioner

v.

UNION TRUST COMPANY OF MARYLAND
A BODY CORPORATE, Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ARTHUR ALAN DEJARDIN
Petitioner
746 Camberley Circle
Baltimore, Maryland
21204

Of Counsel:
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1979

No.

ARTHUR ALAN deJARDIN, PETITION

v.

UNION TRUST COMPANY OF MARYLAND
A BODY CORPORATE, Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH DISTRICT

Petitioner, Arthur Alan deJardin, respectfully prays that a writ of certiorari issue to review the judgment and the opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on January 11, 1979.

REPORTS OF OPINIONS BELOW

The opinion of the Court of Appeals is unreported and appears as Appendix "A" hereto (App. 1a). Petitioner's request for

a rehearing was denied by Order of the Court of Appeals entered on March 9, 1979, said Order is attached hereto as Appendix "B" (App. 6 a). The Order of the District Court by Judge James W. Miller is unreported, and was entered in the course of two hearings on the days set for trial, March 22, 1976. That portion of the transcript of those hearings containing the court's orders appear as Appendix "C" hereto (App. 7a).

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on ~~July~~ Jan. 11, 1979, and the denial for petition for rehearing was entered on March 9, 1979. On May 30, 1979, Petitioner secured an extension of time in which to file this petition until and including August 6, 1979, by an Order of the Court signed by Mr. Justice

Berger and attached as Appendix "D" (App.13 a). This petition for certiorari was filed within that time period. The Court's jurisdiction is therefore invoked under 28 USC §1254(1).

QUESTION PRESENTED

(1) Whether the District Court Judge abused its discretion in dismissing a case for failure to prosecute under Rule 41(b) of the Federal Rules of Civol Procedure where: (i) there was no failure to prosecute; (ii) the District Court never gave Petitioner below the option to prosecute; (iii) the District Court had other "less drastic" sanctions to apply; (iv) alternatively, there is such a fundamental dispute of facts as to Petitioner's willingness to prosecute below.

PROCEDURAL HISTORY

Petitioner originally filed his complaint

on August 23, 1971. Petitioner was then and is now a citizen of Canada and a permanent resident within the United States. The jurisdiction was based upon Article 28 §1331, diversity jurisdiction. The complaint sought damages for various actions of the Respondent including malicious prosecution.

Petitioner was originally represented by counsel who withdrew for reasons of irreconcilable differences. New counsel entered its appearances, and subsequently also withdrew for reasons of irreconcilable differences. The procedural history of the case and the various events taking place throughout the case, are so long as not to merit restatement here. Petitioner was given the opportunity by the District Court to secure additional counsel and periodically attempted to do so. On several occasions a trial date had been set and subsequently postponed for a variety of reasons, some of

them at the instance of Petitioner and some of them at instance of counsel for Defendant.

Prior to March 15, 1976, the District Court Ordered parties to appear for trial on March 15, 1976. At that hearing, Petitioner requested an extension of time for the trial date in order to retain counsel who had indicated he would be available for trial in November of 1976. As part of the motion Petitioner stated that he was incompetent to represent himself. Judge Miller denied the motion for continuance and set March 22nd as the date for trial. The transcript of the March 15th hearing is attached as Appendix "E" (App.15a).

In the course of the March 15th hearing Judge Miller indicated his willingness to consider a continuance if Petitioner could produce testimony as to his incompetency to proceed to trial. The Court stated:

"Now, in the event that I would receive appropriate evidence, sworn testimony or a statement by a physician or psychiatrist that would establish the incompetency of the Plaintiff to proceed, then I would obviously consider a postponement or a continuance. Absent that, I do not find sufficient grounds for a continuance under all of the circumstances of this case." Appendix "E" at pg. 16 a).

Based on that statement, Petitioner appeared on the day set for trial (March 22nd) with a letter from a psychiatrist, indicating that the Petitioner was not competent to proceed to trial. The Judge would not accept the letter as it was not sworn, nor was it subject to cross-examination. The Petitioner, assuming that the letter had complied with the Judge's statement of March 15th, did not come to the March 22nd hearing planning for trial. The Judge Ordered the parties to proceed to trial. The

The Judge did indicate that if the doctor were produced for sworn testimony he would consider a continuance. The Petitioner then telephoned the doctor who indicated that sometime during that day he could appear to testify.

The Judge proceeded to prepare for trial and selected a jury. There was considerable interchange over a Pre-Trial Order and copies of documents which the Petitioner did not at that moment possess. There were angry words between the Petitioner and the Judge, and the matter continually was characterized by such anger. Nevertheless, the transcript indicates that all of the Petitioner's questions were directed at the documents and Pre-Trial Order so as to prepare for trial on that particular day:

THE COURT: "Mr. deJardin I have told you that I am willing to listen to those gentlemen as soon as you produce them."

MR. DEJARDIN: "But are we going to wast the time of choosing a jury?"

THE COURT: "We are going to choose a jury now."

MR. DEJARDIN: "Yes sir, thank you."

They then began voir dire questions. Certain voir dire questions had been pre-submitted and the following interchange then took place.

THE COURT: "Question No. 1 on the voir dire question submitted by the Defendant - Strike that. Question No. 6 -"

MR. DEJARDIN: "I don't believe I have a copy. I was not prepared to go to trial on this particular date because I thought this letter from Dr. Brenner - "

THE COURT: "You weren't prepared to go to trial?"

MR. DEJARDIN: "No sir, because I thought the letter answered your question. I just wonder if I might have a copy of that?"

MR. HOWELL: "Your Honor, I move to dismiss for failure to prosecute."

THE COURT: "Motion granted. This is it."

Thus the case ended.

Shortly thereafter Dr. Sayers Robert Brenner appeared to testify on behalf of Mr. deJardin in support of the motion to continue. Judge Miller called the Court into session and at the beginning of the hearing the following interchange took place.

THE COURT: "All right, I would like to hear from Dr. Brenner as to your physical or mental state in reference to your motion."

MR. DEJARDIN: "May I inquire as to how we are hearing this at this time? Is there not before the Court a dismissal? Is that being held in abayance?"

THE COURT: "No, I have ruled that this case is dismissed for lack of prosecution,

subject, however to your ability to proceed with this case and that is why I want to hear from Dr. Brenner."

MR. DEJARDIN: "Subject to my ability?"

THE COURT: "Correct."

There was then a long hearing during which Dr. Brenner testified. At the end of the hearing the Court stated: "The Court finds and believes that the Plaintiff, although certainly not as capable as counsel, is capable of conducting his case." This entire exchange is included in Appendix "C".

OPINIONS BELOW

In granting Defendant's motion to dismiss for failure to prosecute, Judge Miller presumed that the statements made by Petitioner amounted to a statement that he would not prosecute the case. Thus, the dismissal under Rule 41(b) for failure to prosecute is effectively premised on the Court's belief

that the Petitioner in fact would not prosecute.

On appeal both counsel for Petitioner and Respondent premised their arguments on the mistaken fact that Petitioner in fact would not prosecute. Thus, the issues on appeal turned on whether or not the Court below should have granted a continuance rather than dismiss the case. Inasmuch as the briefs to the Court of Appeals did not raise the issue of whether or not Petitioner was prepared to prosecute, the basic issue of this case was never raised before the Fourth Circuit. On certiorari to the Court of Appeals the United States Supreme Court may consider questions which the Court of Appeals did not reach because attention was centered on other issues. See Tunstall v. Brotherhood of Locomotive Fireman and Enginemen, 1944 323 US 210 89 Law Ed. 187 67 Sup. Ct. 235; United States v. Ballard

322 US 78 88 Law Ed. 114 86 Sup. Ct. 882 (1942); United States v. New York Tel. Co., 177 US 54 Law Ed.2 376 98 Sup. Ct. 364.

INTRODUCTORY STATEMENT

Petitioner readily concedes that this case is characterized by a long and contentious history. Moreover, Petitioner concedes that much of the acrimony between Petitioner acting pro se below and the Judge grew out of the conduct and statements of the Petitioner. It is submitted however, that the record clearly reflects that it was the history of acrimony that gave rise to the dismissal rather than a failure to prosecute. Moreover, such acrimony no matter how much it justifies the Trial Court's impatience, cannot be the basis for a dismissal for failure to prosecure where there has been no failure. Richman v. General Motors Corp., 437 F.2d 196 (4th Cir. 1974).

Additionally, Petitioner concedes an inherent dilemma in the presentation of this case. If consideration of this case is premised on Plaintiff's refusal to go to trial then any reviewing court has more than sufficient justification to affirm the dismissal for failure to prosecute. If, however, Petitioner was willing to prosecute, then clearly a dismissal for failure to prosecute is ipso facto an abuse of discretion no matter how acrimonious the past procedures. Petitioner's argument is thus premised on three basic facts supported by the record: First, that Petitioner did not fail to prosecute at the time the motion to dismiss for failure to prosecute was granted; second, that the evidence of whether or not Petitioner would in fact prosecute is the subject itself of such dispute as to constitute an abuse of discretion where the Judge

dismisses for failure to prosecute, and third, the Trial Court never considered the lesser sanction of compelling Petitioner below to prosecute the case or of giving him the option to prosecute.

LEGAL FRAMEWORK

The criteria by which dismissals for failure to prosecute under Rule 41(b) are upheld are very clear and very simple. A Trial Judge has discretion to dismiss a case for failure to prosecute. Such dismissal will be reversed on appeal only upon a showing of abuse of discretion. See Link v. Wabash Railroad, 370 US 626, 82 Sup. Ct. 1386, 8 Law Ed.2 734 (1962). However, dismissal with prejudice for failure to prosecute is a harsh sanction and should be resorted to only in extreme cases. The judge must be ever mindful that the policy of the

law favors a hearing of a litigant's claim upon the merits. See Richman v. General Motors Corp., 437 F.2d 196 (4th Cir. 1971) Davis v. Operation Amigo Inc., 378 F.2d 101; Reizakis v. Loy, 490 F.2d 1132 (4th Cir. 1974).

While reviewing Courts should examine all of the circumstances of the case to determine whether or not there has been an abuse of discretion, reviewing Courts generally have established four criteria to be reviewed to make such a determination: (1) whether or not the Plaintiff proceeded in a deliberate dilatory fashion; (2) whether the Plaintiff was personally responsible for the incidents that delayed the case; (3) whether the District Court considered other measures less drastic than dismissal in selecting appropriate sanctions; and (4) whether a continuance would have prejudiced the defense. See Reizakis v. Loy, 490 F.2d 1132 (4th Cir. 1974); Busch v. United States Postal Service,

496 F.2d 42 (4th Cir. 1974); Richman v. General Motors Corp., 437 F.2d 196 (4th Cir. 1971); Link v. Wabash Railroad, 370 US 626, 82 Sup. Ct. 1386, 8 Law Ed.2 734 (1962).

This criteria is well established not only in the Fourth Circuit but in every other Circuit as well as in the Supreme Court. In all cases reviewing a dismissal for failure to prosecute the review is necessarily premised on the fact that the Plaintiff below failed to prosecute. Marshall v. Sielaff (3rd Cir. 1974); Theilmann v. Rutland Hospital (2nd Cir. 1972); Thompson v. Fleming, (5th Cir. 1968); Sandee v. Rohm and Haas, (8th Cir. 1956); Pease v. Peters (1st Cir. 1977); Nevels v. McCall (5th Cir. 1969); DuBoyce v. Kruger & Birch (3rd Cir. 1957; Grunewald v. Missouri Pacific (8th Cir. 1964); Krodel v. Houghtaling (4th Cir. 1972); Ramsay v. Baily (5th Cir. 1976), and Redac v. Allstate (2nd Cir. 1969). In each of these cases

either the Plaintiff failed to appear for trial; the Plaintiff's counsel failed to appear, or the Plaintiff specifically, clearly and unequivocally refused to proceed to trial after being ordered to do so. Petitioner is for obvious reasons unable to find any case reviewing a dismissal under Rule 41(b) where the Plaintiff was willing to prosecute.

REASONS FOR GRANTING THE WRIT

The Writ Should be Granted to Resolve Conflict Between the Decisions of Courts of Appeals, Including the Fourth Circuit, and to Resolve Conflicts Between the Decisions of the Fourth Circuit and Opinions of This Court.

Within the legal framework set forth above, the decision of the District Court and its affirmance by the Fourth Circuit is in complete conflict with the decisions

on this question not only by courts of all other circuits, but by other decisions of this same Fourth Circuit. The conflict arises not simply by the application of law, but as a result of the application of law to the facts of this case.

1. Whereas the Fourth Circuit has scanctioned the failure of the District Court to consider compelling Petitioner to trial, all other circuits and even the Fourth Circuit have required that considerations of dismissals for failure to prosecute be premised on an actual failure of prosecution.

2. Whereas the Fourth Circuit in failing to consider the less drastic alternative of compelling Petitioner to trial, and to make a determination as to whether such alternatives would be prejudicial to the Defendant, all other circuits, and indeed,

the Fourth Circuit have required a showing that other less drastic alternatives would not be prejudicial to the Defendant. Here clearly the alternative of compelling trial would not be prejudicial to the Defendant inasmuch as the Defendant was at trial presumably prepared to go to trial.

In most, if not all, cases reviewing discussed under Rule 41(b) the issue is whether a continuance should have been granted as a less drastic sanction than dismissal. If a continuance is denied the party may choose either to prosecute or not. If he prosecutes, he may then challenge the denial of continuance on appeal. See Latham v. Crofters Inc., 492 F.2d 913 (4th Cir. 1974); United States v. Phifer, 511 F.2d 960 (4th Cir, 1975); Marshall v. Sielaff 492 F.2d 917 (3rd Cir. 1974). Here, the Petitioner was denied the option to

continue the case or to prosecute, a double-barrelled abuse of discretion.

The Writ Should Be Granted Because the Fourth Circuit Has So Departed From Accepted and Usual Course of Judicial Proceeding Or So Far Sanctioned Such a Departure by a Lower Court as to Call For the Exercise of the Supreme Court's Power of Supervision.

1. Petitioner's argument is premised on the statement that the District Court dismissed his complaint for failure to prosecute when there was no such failure. Such a dismissal is not authorized under Rule 41(b), and it is at such variance from accepted judicial practice, as never to have been raided or attempted by any court in the land. Indeed, such a dismissal is so far a departure from ordinary course

of conduct as to be inherently impossible. i.e., No court can dismiss for failure to prosecute if there has been no such failure. It is submitted that the Fourth Circuit in affirming the dismissal below has sanctioned such a departure from the usual course of judicial proceeding as to call for the exercise of the Supreme Court's power of supervision. To do otherwise will result in the drastic sanction of forever barring the Plaintiff from seeking to resolve his claim on its merits.

2. In all cases involving dismissal for failure to prosecute one of the alternatives available to the Trial Judge is to compel the Plaintiff to go to trial. Such compulsion not only permits the Plaintiff below to try his case on the merits, but also avoids the more harsh sanction of dismissal, and is inherently not prejudicial

to a defendant seeking trial. Here, the Petitioner was denied both his motion for a continuance and his trial. In all other cases and accepted judicial course of conduct, a Plaintiff is entitled to one alternative or the other. That is, he either gets a continuance, and if the continuance is denied he then goes to trial. Only when he fails to go to trial can the case be dismissed for failure to prosecute.

3. Petitioner further recognizes that the Supreme Court in considering this petition must examine the record to determine whether or not there has been a failure to prosecute. Petitioner submits that the record clearly indicates that there was no failure to prosecute but even if the record is not clear on this question, then in order to support a dismissal for failure to prosecute, the Trial Court must firmly establish

by hearing or otherwise that the party below is not willing to prosecute before dismissing under Rule 41(b). Absent such a clear determination, a dismissal for failure to prosecute becomes an abuse of discretion.

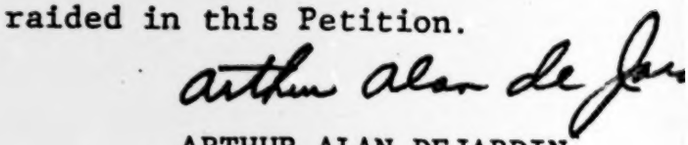
CONCLUSION

Petitioner readily concedes that the past history of acrimony and delay undoubtedly contributed to the confusion at the particular hearing in question. Nevertheless, such history does not warrant a dismissal for failure to prosecute where there is no failure.

Petitioner is currently being subjected to the harsh sanction of dismissal. In part this sanction is imposed because he was representing himself pro se at the time of the hearing in question. Moreover, on appeal

he was represented by counsel. Counsel for both parties before the Fourth Circuit failed to raise the fundamental issue of whether or not there was an actual failure of prosecution. Instead, the Court of Appeals was forced by the briefs of the parties to focus on other issues which presumed the crucial issue in dispute. In the interest of justice; in the exercise of this Court's supervisory responsibilities; it is respectfully submitted that this Petition for writ of certiorari be granted. It is further requested that upon granting this Petition, this Court either reverse and remand to the District Court for trial, or remand to the Fourth

Circuit for additional consideration of the issues raided in this Petition.



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Washington, D. C. 20036

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit was served upon the following by depositing copies in the U. S. mail, first class, postage prepaid on August 6, 1979.

DATED: August 6, 1979.

ARTHUR ALAN DEJARDIN

John H. Mudd

H. Thomas Howell

Donald L. DeVries, Jr.

Semmes, Bowen & Semmes
10 Light Street
Baltimore, Maryland 21202

Attorneys for the Respondent

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 76-1567

Arthur Alan deJardin,

Appellant,

v.

Union Trust Company of Maryland,
a body corporate,

Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore, James R. Miller, Jr., District Judge.

Submitted: December 14, 1978. Decided: Jan. 11, 1979

Before FIELD, Senior Circuit Judge, WIDENER and HALL, Circuit Judges.

(Michael E. Marr (Sutley and Marr) on brief for the Appellant. John H. Mudd, H. Thomas Howell, Donald L. DeVries, Jr. (Semmes, Bowen & Semmes) on brief for the Appellee.)

PER CURIAM:

Arthur Alan deJardin appeals the district court's order dismissing for failure to prosecute his malicious prosecution suit against the Union Trust Company of Maryland. We affirm.

At the outset we note that, although a dismissal for failure to prosecute is a harsh sanction that should be used with much caution, Federal Rule of Civil Procedure 41 (b) clearly gives a district court the authority to do so when the circumstances warrant. In determining whether the district court abused its authority, we must consider four criteria: (1) the degree of personal responsibility attributable to the plaintiff; (2) the amount of prejudice suffered by the defendant because of the delay; (3) the extent to which the case was deliberately drawn out; and (4) whether sanctions less drastic than dismissal were considered. Davis v. Williams, ____ F.2d ____ (4th Cir., Nov. 30, 1978) (No. 77-2636). McCargo v. Hedrick,

545 F.2d 393, 396 (4th Cir. 1976). Viewing the record in light of these four factors, we think there was ample justification for the district court's ruling.

De Jardin, through counsel, first filed suit against the Union Trust Company on August 23, 1971. Fifty-five months later, on March 27, 1976, the suit was dismissed when deJardin, now acting pro se, appeared for trial totally unprepared. During the interim no less than 21 pre-trial conferences and hearings were conducted by the court; two sets of attorneys withdrew from representing deJardin because of irreconcilable differences with him; deJardin failed to comply with numerous court orders relating to discovery, the preparation of a pre-trial order, and the obtaining of new counsel; and deJardin was warned several times by the court of the possibility of dismissal. It is clear from the record that deJardin was personally responsible for many of the delays and that the defendant was prejudiced by deJardin's conduct. Moreover, the

district court went to great lengths to accommodate deJardin's attempts to represent himself, choosing on a number of occasions to extend deadlines and overlook non-compliance with court orders rather than to dismiss the action.

On appeal it is argued that it was error to order dismissal in view of deJardin's obvious inability to represent himself. The district court should have continued the case, counsel urges, when on the last scheduled trial date deJardin produced a psychiatrist who testified about deJardin's "markedly compromised" ability to conduct a trial. DeJardin had also found an attorney who agreed to represent him if the trial were postponed another seven or eight months.

We think, however, the court was warranted in refusing to grant the requested continuance under the circumstances. The phychiatrist's testimony, in addition to being vague and speculative, was based on only one interview with

deJardin, who had been appearing before the district judge for several years. Moreover, deJardin had been given more than ample time to locate an attorney. The last minute finding of one who requested another long trial delay certainly did not require the court to again accommodate deJardin.

Accordingly, finding no abuse of discretion by the district court, we dispense with oral argument and affirm the order of dismissal.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 76-1567

FILED
MAR 9 1979
U. S. Court of Appeals
Fourth Circuit

Arthur Alan deJardin,

versus Appellant,

Union Trust Company of Maryland,
a body corporate,

Appellee.

ORDER

Upon consideration of the appellant's letter of February 18, 1979 treated as a request to file a petition for rehearing out of time,

IT IS ORDERED that:

(1) the petition for rehearing to be filed out of time is granted;

(2) the petition having been considered by the court, is denied.

Entered at the direction of Judge Field, for a panel consisting of Judge Field, Judge Widener, and Judge Hall.

For the Court,

/s/ William K. Slate, II
CLERK

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ARTHUR ALAN deJARDIN	)	
	)	
	)	
vs.	)	71-909-M Civil
	)	
	)	
UNION TRUST COMPANY OF MARYLAND, a body corporate	)	

Baltimore, Maryland
March 22, 1976

The above entitled case came on for hearing on Pre-Trial matters before His Honor, James R. Miller, Jr. at 9:55 a.m.

A P P E A R A N C E S

For the Defendant:

Donald L. DeVries, Jr.
H. Thomas Howell

For the Plaintiff:

Proper Person

- - - - -

Page 27: THE COURT: Mr. deJardin, if you would wait until you are spoken to and until someone else is finished, then perhaps you may learn without having to interrupt constantly.

MR. deJARDIN: Thank you, sir.

THE COURT: Question number 1 on the voir dire question submitted by the Defendant -- strike that.

Question number 6 --

MR. deJARDIN: Sir, I don't believe I have a copy. I was not prepared to go to trial on this particular date because I thought this letter from Dr. Brenner --

THE COURT: You weren't prepared to go to trial?

MR. deJARDIN: No sir, because I thought the letter answered your question. I just wonder if I might have a copy of that.

MR. HOWELL: Your Honor, I move to dismiss for failure to prosecute.

THE COURT: Motion granted. That is it.

Mr. deJARDIN: Is that a final order, Your Honor?

THE COURT: That is a final order. Mr. deJardin.

MR. deJARDIN: Do I have your permission to take it to the Circuit Court, Your Honor?

THE COURT: You can take it anywhere you choose. The case is dismissed for failure to prosecute.

MR. deJARDIN: And for prejudice.

THE COURT: Dismiss the jury.

(After recess-12:00 Noon.)

Page 29: THE COURT: Be seated, please.

Now, Mr. deJardin, I understand that Dr. Brenner is here.

MR. deJARDIN: Yes, sir.

THE COURT: All right. I would like to hear from Dr. Brenner as to your physical or mental state in reference to your motion.

MR. deJARDIN: May I inquire as to how we are hearing this at this time? Is there not before the Court a dismissal? Is that being held in abeyance?

THE COURT: No, I have ruled that the case is dismissed for lack of prosecution, subject, however, to your ability to proceed with this case; and that's why I want to hear from Dr. Brenner.

MR. deJARDIN: Subject to my ability.

THE COURT: Correct.

MR. deJARDIN: Dr. Sayers Brenner, would you like him to take the stand?

THE COURT: Yes, I would.

THEREUPON - -

SAYERS ROBERT BRENNER

was called as a witness for and on behalf of the Plaintiff, and, after having been duly sworn, testified as follows:

THE CLERK: Please state your full name for the record, sir.

THE WITNESS: Sayers Robert Brenner, M.D.

Page 75: The Court obviously prefers that every person be represented by counsel. The Court, during the course of this case, has made numerous efforts to afford the Plaintiff the opportunity to obtain counsel. The Court has told Mr. deJardin as well on numerous occasions that this case was going to proceed this time at the scheduled time.

Mr. deJardin apparently chose not to consult Mr. Marr until a few days before Mr. Marr, or one day --

MR. deJARDIN: May I make a factual objection to that, sir?

THE COURT: However many days it is Mr. Marr set forth in his letter, a copy of which is in the Court file.

(Continuing) And, the Court, for reasons which are set forth really in Mr. Marr's letter, declined to grant a continuance where the Plaintiff has been aware for months that this case was going to proceed.

The Court is not going to place itself or allow itself to be placed in the position of having the Plaintiff dictate the terms of and the times under -- that is, the terms under which and the times at which Court will be conducted and the case tried.

Page 76: The Court finds and believes that the Plaintiff, although certainly not as capable as counsel, is capable of conducting his case.

If personality problems justified the Court in making special concessions to litigants before it, then the Court's business could never be conducted.

Court will stand adjourned. Case dismissed.

(Thereupon, at 1:20 o'clock p.m. an adjournment was had in this matter.)

- - - - - -

APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. A-1014

ARTHUR ALAN de JARDIN,

Petitioner,

v.

UNION TRUST CO., OF MARYLAND

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 6, 1979

/s/ Warren E. Burger
Chief Justice of the United States.

Dated this 30th day of May, 1979

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ARTHUR ALAN deJARDIN)
)
)
vs.) No. 71-909-M Civil
)
)
UNION TRUST COMPANY)

Baltimore, Maryland
March 15, 1976

The above entitled case came on for pre-trial conference in camera before His Honor, James R. Miller, Jr., at 4:30 o'clock p.m.

A P P E A R A N C E S

For the Plaintiff:

Proper Person

For the Defendant:

H. Thomas Howell
Donald L. DeVries, Jr.

- - - - -

Page 15: MR. deJARDIN: (continuing) but I would prefer that the Court --

THE COURT: All right.

The motion for continuance will be denied.

MR. deJARDIN: Well - -

THE COURT: I do not find sufficient or adequate grounds for a continuance at this time. Now, in the event that I would receive appropriate evidence, sworn testimony or statement by a physician or psychiatrist that would establish the incompetency of the plaintiff to proceed, then I would obviously consider a postponement or continuance. Absent that, I do not find sufficient grounds for a continuance under all of the circumstances of this case.

Motion denied. Court will stand in recess.

MR. HOWELL: Your Honor, I would ask, with regard to the top of page 3 of the pre-trial

order, where the Court has issued, in effect, an order limiting concerning what may or may not be said in the opening statements, that that be amended to add this alleged incident of March 5, 1976. It seems to me, either expressly or by implication, that Mr. deJardin may refer to this, either purposely or inadvertently, and I think it has no place before the Jury in this case. We do not want any kind of mistrial or grounds for mistrial, and we think that that ought to be in the pre-trial order so that there will be no ambiguity or misunderstanding that may erupt during the course of the trial.